IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1242 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ARVIND JAYANTILAL TALATI

Versus

MANDAKINIBAN KESHAVLAL SHAH

Appearance:

MR SK ZAVERI for Petitioner

MR RA MISHRA for Opponent No. 1

SERVED BY RPAD - (N) for Opponent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 10/03/98

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated

25th June, 1982, passed by the Appellate Bench of the Small Causes Court at Ahmedabad, in Regular Civil Appeal No. 181 of 1981, dismissing the appeal and confirming the judgment and decree passed by the learned Judge of the Small Causes Court, Ahmedabad, on 24th April, 1981, in Regular Civil Suit No.494 of 1977, ordinarily called as H.R.P.Suit, directing to hand over peaceful and vacant possession of the western portion of the premises let to the opponent No.1, the original defendant No.2 has preferred this Revision Application.

2. In order to appreciate the rival contentions, necessary facts may in brief be stated. The opponent No.1 (original plaintiff in the suit) is the owner of a building called Balentine Haveli situated near Teen Darwaja in the city of Ahmedabad. The opponent No.2 (original defendant no.1) was the head tenant. The second floor of that building bearing Mun.C.No.3078 (hereinafter referred to as the suit premises) was let to him at the monthly rent of Rs.125/- plus other taxes and charges. That second floor is divided into three portion, ordinarily described by the parties as Cabins. The petitioner joined as defendant no.2 in the suit, is in possession of the western portion of the suit premises and he is using & occupying the said premises. On 1.1.1957, the suit premises came to be let to the opponent No.2. In or after 1960, the opponent No.2 sublet the western portion of the suit premises to the present petitioner at the rent of Rs.125/- per month, and thereby committed the wrong under the Bombay Rents, Hotel and Lodging House Rates (Control) Act 1947, (for short the Bombay Rent Act). The opponent No.1 knew that the opponent No.2 had unlawfully sublet the western portion of the suit premises. She was therefore entitled to have the possession of the suit premises. A notice was then given on 7th August, 1970, calling upon the opponent No.2 and the petitioner to hand over the possession. On 28th August, 1970, the opponent No.2 replied the notice, but, the petitioner did not reply the same. No one handed over the possession of the suit premises. The opponent no.1 then filed Regular Civil suit No.4945 of 1997 before the Small Causes Court at Ahmedabad, to recover the possession of the suit premises on the ground of subletting, non-user, and bonafide requirements. At the time of hearing the ground of bonafide requirement was not pressed before the trial Court.

3. The opponent No.2 appeared before the trial Court and filed the written statement Exh.19, wherein, he has

denied every allegation levelled against him. He has come forward with the case that the suit premise were let to him from 1st January, 1957. As per the agreement between him and the opponent No.1, he was free to sublet whole or part of the suit premises or give it on license, and therefore, rent was increased. After January, 1957, he permitted Balkrishna V. Doshi to use and occupy the western portion of the suit premises on `leave and license base' which was within the knowledge of the opponent No.1. From 1st January, 1959, within the knowledge of the opponent No.1, the petitioner was doing his work in the western portion and the opponent No.1 also consented to such use being made by the petitioner. From 1st February, 1959, the opponent no.1 gave the western portion of the suit premises to the petitioner on leave and license base. It was not therefore just and proper on the part of the opponent No.2 to allege that he had sublet the western portion of the suit premises to the petitioner after 1960. He had permitted the petitioner to use his furniture and telephone bearing No.53169. One key of the western portion remains with him. The petitioner was not put into the exclusive possession of the western portion of the suit premises. In short, he has alleged that he was not his sub-tenant but a licensee.

4. The petitioner filed the written statement Exh.19. He has also denied the allegations levelled against him. According to him he received the copy of the notice, and therefore, he was not bound to reply the same. For want of a notice the suit against him was not maintainable. He was using and occupying the western portion ad-measuring 16 feet x 32 feet. If he is regarded as the trespasser, the court is not competent to hear and decide the suit because the court exercising jurisdiction under the Bombay Rent Act is not competent to hear and decide the suit against the trespasser. After January, 1957, the opponent No.2 within the knowledge of the opponent No.1 permitted Balkrishna V. Doshi to use and occupy the western portion of the suit premises. He was then put into the possession of the western portion, and rent thereof was fixed at Rs.115/- per month. He is an Architect. He stayed at Bombay with Balkrishna V. Doshi. By passage of time both became the fast friends. Both were also together in Paris for their study and business too. As they had come closer, Balkrishna V. Doshi permitted him to use the western portion of the premises as his associate partner from 1957 and thus he came into the possession of the western portion of the premises, wherein, he and Balkrishna V. Doshi were carrying on their business. Thereafter,

Balkrishna V.Doshi stopped working in the western portion because he had to go to abroad. After Balkrishna went abroad, he continued to use and occupy the western portion and work as Architect. In 1959, Balkrishna V. Doshi came back to India. Both then separated settling the accounts, and he continued to be in possession of the western portion of the suit premises. From October 1959, therefore, he is using the western portion and he is also enjoying possession thereof at the monthly rent/license fee of Rs.115/-per month. He is from October 1959, continued as tenant/licensee by the opponent No.1 and he has been paying the license fee/rent of Rs.115/- to the opponent No.2. Thus, the opponent No.1 has accepted Balkrishna V. Doshi and him as his sub-tenants from 1955-57. The opponent No.1 therefore was bound to accept him as her direct tenant. He is not the trespasser etc.

5. The learned Judge then framed necessary issues at Exh.26 and fixed the suit for hearing. During the course of the hearing, the opponents interse settled their dispute and filed the statements of compromise (Exh.33) wherein, opponent No.2 admitted that the claim of the opponent No.1 relating to the amount of rent stating that the same was true and genuine; and accepted his liability to pay the amount of rent. He in the said compromise statement further admitted that he was having no interest in the suit premises. He was the tenant in arrears of rent and he did not wish to pay the amount of rent. He had from 1962 given the western portion of the suit premises to the petitioner under leave and license agreement. He then urged the court to pass the decree of eviction. The statement of compromise dated 18th November 1980 is signed by opponent no.2 and Kiran J. Shah who is the power of attorney holder of opponent no.1. On the basis of such compromise statement, the trial court ordered to pass the decree in terms of compromise against the opponent No.2, and further ordered to proceed with the suit against the petitioner. The decree (Exh.34) was then drawn directing the opponent no.2 to hand over the possession. Thereafter the petitioner on 2nd December, 1980, presented a purshish (Exh.35) wherein he stated that after the decree in terms of compromise was passed, he on record remained a formal party, because against him no cause of action had arisen to file the suit and no relief was also sought against him. In the plaint, when he was described to be a person in unlawful possession of the western portion of the suit premises, under Bombay Rent Act the court had no jurisdiction to hear and decide the suit against him. He therefore urged to dismiss the suit against him and award compensatory costs. The learned trial Judge simply put

up the endorsement "recorded" on the purshish. Appreciating the evidence before him, the learned Judge held that the opponent No.2 had unlawfully sublet the western portion of the suit premises to the present petitioner, but the case of bonafide requirement and non-user was not established. As the case of unlawful subletting was established, the learned Judge passed the decree on 24th April, 1981, directing the petitioner as well as the opponent No.2 to hand over the possession of the suit premises inclusive of the western portion to the present opponent No.1.

6. Being aggrieved by such judgment and decree, the petitioner preferred Regular Civil appeal No.181 of 1981 before the Appellate Bench of the Small Causes Court at Ahmedabad, against the present opponent No.1. After hearing the parties on 25th January, 1982, the Appellate Bench of the Small Causes Court at Ahmedabad, dismissed the appeal and confirmed the judgment and decree passed by the trial Court. It is against that judgment and decrees, the present Revision Application has been filed.

7. Assailing the judgments and decrees, it is contended on behalf of the petitioner that the trial Court acted illegally in proceeding with the suit after the compromise decree (Exh.34) came to be passed, because in the plaint the petitioner is alleged to be in unlawful possession of the western portion of the suit premises. After the compromise decree was passed the suit ceased to be the suit between the landlord and tenant, and it eventuated a suit between the owner of the premises and the trespasser, or in the alternatively a suit between the licensor and the licensee for which the court exercising the power under Section 28 of the Bombay Rent Act, was not competent to hear and decide the suit. The Appellate Bench of the Small Causes Court ought to have, therefore, considering this aspect of the case, allowed the appeal and set aside the judgment and decree passed by the trial Court. It is also contended that within the knowledge of the opponent No.1, and her acquiescence, the petitioner continued to be in possession of the western portion of the suit premises alongwith Balkrishna V. Doshi since 1957. When that is the case, the petitioner was in fact not the trespasser, but a lawful sub-tenant because from May 1959, sub-tenancy created till then came to be legalised by the Government making necessary amendments in the Bombay Rent Act. The opponent No.1, was therefore, bound to accept the petitioner as lawful tenant rather than describing him to be the trespasser. The petitioner had entered into the partnership with Balkrishna V. Doshi, and the partnership business was

being carried on in the name and style `Vastu-Shilpa'. After Balkrishna V. Doshi left the business and started his own elsewhere, the petitioner alone remained in the western portion of the suit premises within the knowledge of opponent No.1, and as he was in possession of the western portion of the suit premises right from 1957, he had became a legal tenant of the opponent No.1. Both the Courts below, missing to take a note of such aspect of the case and evidence thereof on record, erroneously held that the petitioner was the unlawful sub-tenant and was liable to vacate. I will deal with this contention in detail hereinbelow at the proper stage.

8. On behalf of the opponent No.1, Mr. R.A. Mishra, the learned advocate has supported the judgments and decrees of both the Courts submitting that neither the error of law nor the error of facts has been committed by both the Courts below. The judgments and decrees passed by both the Courts are quite in consonance with law and there is no justifiable reasons to interfere with the judgments and decrees passed. He also submitted that when there is concurrent findings of both the Courts below, this Court may be slow in interfering with the findings & upsetting the decrees. In Revision, the scope of inquiry is very limited, and this court would not be able to interfere with the decrees passed by both of Courts below in Revision easily, going into the factual aspect because this is not the appellate jurisdiction the Court is exercising.

9. It may be stated that the Revisional Jurisdiction of the Court is not as wider as appellate Jurisdiction is. The scope of inquiry in Revision is limited. The Revisional Jurisdiction is to be exercised only for the purpose of satisfying that the decision of the lower court is in accordance with law. If there is miscarriage of justice owing to the error of law, I can interfere with the decision of the lower court. I cannot reassess the evidence and interfere with the finding of fact for evenif on the question of fact I am of a different view, I cannot substitute my view holding that the same is better than the view of the lower court. Looking to my such limited scope of inquiry, I have with meticulous care and finicky details, keeping of course the rival contentions in mind, perused the evidence, and I find no justification to interfere with the decree passed, for the reasons stated hereinbelow.

10. Before I proceed, it may be stated that I am in general agreement with the reasons assigned and conclusions drawn by both the courts below, and

therefore, it is not necessary to restate the same. For my such view, a reference of a case of Girijanandini Devi and others V/s. Bijendra Narain Choudhary, A.I.R. 1967 Supreme Court 1124 may be made. However, I will deal with the questions raised before me for the purpose of assailing the judgments and decrees of both the courts below.

11. It is the contention of the learned advocate for the petitioner that there can be only one decree in the suit; more than one decree in the suit is foreign to law. The contention is misconceived. Section 2(2) of the C.P.Code provides the definition of the decree. As per that provision "decree" means the formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. The expression "with regard to all or any of the matters in controversy" in Section 2(2) C.P.Code indicates that if on some of the points the parties settle the dispute or on some points the dispute is settled between the plaintiff and some of the defendants, a decree can be passed, and later on the court can proceed with the suit and pass the decree qua other points in controversy between the parties. In a suit therefore there may be more than one decrees, not in conflict with the other one. It may be stated what is held by the Supreme Court in Bai Chanchal & Others Vs Syed Jalaluddin and Others A.I.R. 1971 S.C. 1081. It is laid down that there can be more than one decree in the suit, making it clear that in the suit if the decree is passed, on the basis of compromise, against some of the defendants at one stage, another decree at a later stage determining the rights of the remaining defendants qua other points in issue is permissible. It is also held therein that the two decrees passed, were separate & independent, and neither was a nullity. In this case therefore passing of two decrees is not illegal; and neither of the decrees is nullity and one does not conflict with another. The contention therefore fails.

12. In plaint it is alleged that the petitioner is in use and occupation of the western portion of the suit premises illegally and he is joined as party to avoid complications in the matter in future. The opponents settled their dispute interse and filed the statement of compromise at Exh.33. The decree (Exh.34) in terms of compromise was drawn and the suit was ordered to be proceeded with against the petitioner. As the petitioner is described to be the trespasser and not the tenant in the plaint, after the decree in terms of compromise came

to be passed, the suit ceased to be the rent & possession suit under the Bombay Rent Act and fell off the ambits of Section 28 of the Bombay Rent Act. The Court under Bombay Rent Act therefore lost the jurisdiction to proceed with the suit and decide the same, because after the decree came to be passed in terms of compromise, the suit stood converted into the suit between the owner of the suit premises and the trespasser for possession. The Civil Court acquired the jurisdiction to hear and decide the suit. However the trial court vested with jurisdiction under the Bombay Rent Act heard and disposed of the suit passing the decree against the petitioner. The decree passed being without jurisdiction is therefore a nullity. This Revision application is on this ground therefore deserves to be allowed is the contention advanced on behalf of the petitioner.

13. Whether settlement on some issues between plaintiff and some of the defendants interse and consequential decree when passed, would convert the nature of the suit having impact on the jurisdiction of the court is the question raised for consideration. The jurisdiction of the court has to be determined on the basis of the case pleaded in the plaint and not in written statement by the defendant. If some of the issues are set at rest at any stage of the hearing, and decree qua these issues is passed, it will not have the effect of changing the nature of the suit, the suit will essentially remain to be the same and will not have any trasmutative effect provided the decree passed does not altogether alters the nature of the suit. It may be noted that in the plaint the opponent no.1 has come forward with the case of sub-letting alleging that the suit premises were let to the opponent no.2 who later on without her consent unlawfully sublet to the petitioner. The petitioner is thus described to be the sub-tenant and not the trespasser in the plaint. The suit initially filed against the tenant and sub-tenant to recover the possession of the premises on the grounds of arrears of rent and sub-tenancy did not stand converted into the suit of a different nature after the decree in terms of compromise came to be passed. Having regards to the case pleaded in plaint and aforesaid defence raised by the petitioner in his written statement as well as statement made in the statement of compromise (Exh.33), the trial court had to determine whether the petitioner was the sub-tenant or the licensee, and whether decree on the ground of sub-letting should be passed. Adjudication of such issue was within the competence of the trial court under Bombay Rent Act and no other. The suit therefore essentially remained to be the Rent & Possession suit

under the Bombay Rent Act, and did not stand converted into the suit of different nature or characteristic; consequently decree passed against the petitioner cannot be held to be a nullity as canvassed before me.

14. It is the next contention, of course in the alternative, that the decree (Exh.34) came to be passed in terms of compromise arrived at between the opponents. In the statement of compromise (Exh.33) presented before the trial court pursuant to which the compromise decree came to be passed is signed by Shri Kiran J. Shah, the power of attorney holder of the opponent no.1, and opponent no.2. In that statement as stated in para 5 herein above, it is mentioned that opponent no.2 from 1962 permitted the petitioner to use & occupy western portion of the suit premise under leave and license agreement. By such statement the opponent before the court declared that the petitioner was the licensee and not the sub-tenant as alleged in the plaint. When accordingly the opponent no.1 accepted and admitted the status of the petitioner as the licensee, the suit then came to be converted into the suit between the licensor and licensee and did not continue to be the suit between landlord and sub-tenant. The operation of Section 28 of the Bombay Rent Act therefore discontinued and came to an end. The trial court vested with jurisdiction to hear and decide the suit under Bombay Rent Act then lost the jurisdiction. Under general law, the suit then fell within the competence of the Civil Court. The trial court should have then put off it's hand directing the parties to pursue the matter before the competent Civil Court; instead that it proceeded to decide the suit and in fact passed the decree against the petitioner and opponent no.2 as well, on 24-4-81. The said decree dated 24-4-1981 passed without jurisdiction is a nullity and so on this ground also this Revision application deserves to be allowed.

15. Whether the statement made in the statement of compromise (Exh.33) describing the petitioner to be the licensee of the western portion of the suit premises should be construed to be the admission of the opponent no.1 is the question that now arises for consideration. In other words, the opponent no.1, who has come forward with the case in plaint that the petitioner is a sub-tenant, can be said to have admitted by the statement (Exh.33) that the petitioner was the licensee of the western portion renouncing or disowing his case pleaded in plaint is the question now posed before me for determination.

16. Before I proceed, what is the law on admission is required to be stated. Reading Section 17 of the Indian Evidence Act, what is clear is that the admission made must be clear unequivocal and conclusive as well as precise or specific by the party. It should not be vague or ambiguous or doubtful. The contents must be clearly examined so as to determine whether admissions is in fact made. In law no inference about the admission can be drawn. It is for the court to decide whether in the facts and circumstances on record the admission in fact is made and should be acted upon, or it should proceed to decide the suit or issue on the basis of other materials on record, for admission is not the conclusive proof but may operate as estoppel. It is pertinent to note that the whole of the statement (Exh.33) is made by opponent no.2 and he then urged to pass the decree against him. The power of attorney holder of the opponent no.1 has then signed the statement signifying waiver of costs, and also the consent to pass the decree against opponent no.1, without prejudice to the case alleged in plaint against the petitioner. It is because of this reason the trial court ordered to proceed against the petitioner and passed the decree (Exh.34) in terms of compromise. Reading the statement (Exh.33) it becomes clear that nowhere the opponent no.1 accepted the petitioner to be her licensee giving go by to her case of sub-tenancy. There is thus no clear specific and precise admission as canvassed. It is also to be noted that, even if it is assumed the statement (Exh.33) to be the admission, the same is not conclusive proof of the matter admitted. In that case also the issue about sub-tenancy was required to be adjudicated giving reasonable opportunity to both the parties to lead their evidence as admission was not the conclusive proof. In such view of the matter the statement of compromise (Exh.33) does not have the effect of changing the nature of the suit. Despite the compromise statements, the suit essentially, between the petitioner and opponent no.1, remained to be the suit for rent and possession cognizable by the trial court under Sec.28 of the Bombay Rent Act. In short, the case of sub-tenancy alleged in the plaint remained unaltered or unaffected and the suit did not stand converted from rent and possession suit to that of a suit between licensor and licensee; and the trial court did not lose it's jurisdiction under the Bombay Rent Act. It may be mentioned that the petitioner when his deposition was being thereafter recorded, admitted when questioned that whatever was stated about his being the licensee in the compromise statement (Exh.33) was not true. Such evidence also supports the view of both the courts below.

17. It cannot be said that because of the compromise arrived at between the opponents, and consequential decree, the petitioner who remained on record was the trespasser, because under sub-tenancy, the sub-tenant cannot have a better status than a trespasser, and the suit evolved to be the suit between the owner of the property and the trespasser. The suit which was a suit for rent and possession essentially remained the same because in that case also the question about the sub-tenancy and the status about the petitioner was to be adjudicated upon and a verdict was to be given whether he was a sub-tenant or a trespasser; and if at all, he was the sub-tenant, whether he was protected because of the Notification that came to be issued by the State of Gujarat, in May 1959. It may be stated here that the petitioner has also come forward with the case that because of the Notification dtd.21-5-59, he being in possession of the western portion of the suit premises as sub-tenant right from 1957, had become the direct tenant of the suit premises as sub-tenancy was then legalised. In view of such case, the nature of the suit was not changed at all, it remained the same, as it was at the initial stage i.e. the time when it was presented before the court, and cognizable by the Rent Court under Section 28 of the Bombay Rent Act. At this stage, Mr. Zaveri, the learned advocate for the petitioner, draws my attention to the decision of the Supreme Court in the case of Raizada Topandas and another V/s. M/s. Gorakhram Gokalchand, A.I.R. 1964 Supreme Court 1348, wherein, it is held keeping in mind Section 28(1) and 29-A of the Bombay Rent Act, that the suit by the licensor against the licensee for relief based on termination of the license, will remain to be the suit within the exclusive jurisdiction of the City Civil Court at Bombay, viz: the suit for a declatory relief namely the defendants were not entitled to enter into or remain in possession of a certain shop in Greater Bombay, and for injuctive relief restraining them from entering into the shop. In that case the allegations in the plaint was that the defendants were granted a license to use the shop of which the plaintiffs were the tenants under the lease and that defendants were wrongfully continuing there in spite of the termination of the license, and were thereby preventing the plaintiffs from carrying on their business in the shop. The defendant appearing in the suit alleged in his defence, that in fact the relationship between them was not that of a licensor and licensee, but that of a landlord and tenant; but the case of a license was alleged only with a view to cloak the real and veritable relations and protect the plaintiffs under the Bombay Rent Act. It was then held that, it was

the suit not under the Bombay Rent Act, but the suit being between the licensor and licensee as alleged in the plaint, was a suit cognizable by the City Civil Court and had not fallen within the exclusive jurisdiction of the Small Causes Court under Section 28(1) of the Bombay Rent Act. It is further held that, if in the plaint plaintiff does not admit a relation which would attract any of the provisions of the Bombay Rent Act, on which exclusive jurisdiction given under Sec.28 depends, the defendant by his plea cannot force the plaintiff to go to a forum where on his averments he cannot go. In short therefore the case alleged in the plaint is the decisive factor and not the case alleged in the defence. The present suit for the aforesaid reasons and case alleged in plaint essentially remained to be the suit between the landlord and tenant, it never stood converted as canvassed. This decision will not, therefore, in any way help the petitioner. For these reasons, I cannot agree with the submission that the trial Court was not having the jurisdiction to hear and decide the suit under the Bombay Rent Act, and on that ground, the decree passed by the Courts below is liable to be set aside.

18. I will now switch over to the next point raised for the purpose of assailing the judgments and decrees passed by both the Courts below, and it is whether the petitioner is a licensee or a sub-tenant. What the petitioner wants this court to hold that in determining the petitioner to be the sub-tenant both the courts below fell into error. According to the petitioner, after the statements of compromise (Exh.33) was presented before the court for passing the decree in terms of compromise, the opponent No.2 the head tenant made it clear that he had given the western portion of the suit premises to the petitioner as licensee from 1962. When that was so, Section 13(1)(e) of the Bombay Rent Act would not be attracted, because neither of the essentials thereof was satisfied. There was no subletting in view of this statements made by opponent No.2 in Exh.33, and there was nothing on record which would show that the opponent No.2 assigned or transferred in any other manner his tenancy interest in the premises to the petitioner. He then drew my attention to the definition of license vide Section 52 of the Indian Easement Act, 1982. As per that definition, in case of license a right to do or to continue to do or upon the immovable property of the grantor is conferred which would in the absence of such right be unlawful and such right does not amount to any easement or any interest in the property. No doubt in case of license a right to do or continue to do in or upon the immovable property is granted by the owner and

the interest in the property does not pass or is not created, and therefore, in case of license, transfer of the interest in the property as required in case of subletting is lacking. But, it appears that, the contention is advanced on behalf of the petitioner assuming a particular fact namely acceptance of petitioner to be the licensee in the western portion of the suit premises. As discussed above, after the statements of compromise (Exh.33) was presented and decree in terms of compromise (Exh.34) came to be passed, the issue whether the petitioner is a sub-tenant or licensee was required to be determined. As the opponent No.1 had come forward with the case in the plaint that the opponent No.2 had unlawfully sublet the western portion of the suit premises to the petitioner and the petitioner came forward with the case of a licensee right from the day of his appearance, looking to the subsequent development in the matter, the status of the petitioner was required to be determined. I have perused the evidence on record and judgments of both the courts, I find no error either of law or fact having been committed by either or Courts below. The appreciation of evidence is quite just and proper, and the conclusions drawn are neither arbitrary nor perverse nor against the sound principles of law. Both the Courts below have therefore rightly held that the petitioner is the unlawful sub-tenant in the suit premises. I am in short say how ?

19. The power of attorney holder of the opponent No.1 has deposed at Exh.54. He has categorically supported the case alleged in plaint. The petitioner figured at Exh.58. According to him, he is in possession of the western portion of the suit premises, right from December, 1957, and prior to it Mr. B.V.Doshi was using that western portion. He was taken as associated partner by B.V.Doshi from December, 1957. Mr. B.V.Doshi was the sub-tenant of the opponent No.2. In August 1958, B.V.Doshi went abroad, and the petitioner remained in charge of the joint venture they were having in the western portion of the suit premises namely `Vastu-Shilp' upto November 1959, or few days prior to November 1959. Mr. B.V.Doshi came back to India and he thought it fit to have his own venture elsewhere, and therefore, he shifted his office to some new premises. So from November 1959, the petitioner hired the western portion of the suit premises at the monthly rent of Rs.125/-. Upto 31st October 1980, he paid the rent to the opponent No.2, and thereafter, he deposited the amount of rent in the court. His such evidence in clear terms goes to show that from November 1959, he hired the premises on lease at the monthly rent of Rs.125/- and then continued to pay

the rent to the opponent No.1, who was the head tenant upto 31st October, 1959. This shows that he is the sub-tenant in the suit premises and not the licensee. Of course, later on, one agreement was entered into and the same was reduced in writing which is produced at Exh.50. It is dated 22nd May, 1972. It is the agreement between the opponent No.2 and the petitioner. Reading that agreement, one may agree with the petitioner that he was a licensee because it is the agreement about the license, but when the mask thereof is torn of, considering other materials on record, the real nature thereof comes to surface. The agreement (Exh.50) is a camouflage, and under the guise of the license, unlawful sub-tenancy was created, so as to hoodwink.

20. It may also be stated that when the petitioner was trapped in the cross-examination, he had to admit that he was in possession of the western portion as sub-tenant, but, he then came forward with the case that he was not unlawful sub-tenant. He has also admitted that on 13th November, 1959, for the first time he paid the rent, the receipt of which is produced at Exh.68. He then paid the rent on 31st December, 1959 to the opponent No.1, the receipt thereof is produced at Exh.69. He had further to admit that a statement made in Exh.33, that he is the licensee right from 1962 is not true. He thus thereby came out with the case that he is the sub-tenant and not the licensee. At one stage, he has stated that he had regularly paid rent to the opponent No.1, and therefore, he did not reply the notice. His case in the written statement Exh.19 also cannot be overlooked. In his written statement at Para.9, he has stated that from October, 1959, as he continued to be in possession of the western portion of the suit premises, he was accepted as the tenant at the monthly rent of Rs.115/- which was being paid by B.V.Doshi. Of course, he has shrewdly come forward with such case, but his ingenuity to develop his case suitably at any time in future cannot be lost the sight of. He has used the word tenant/licensee and lease/license, in his defence and evidence, but he has conveyed the only meaning which can be spelt out is nothing but the sub-tenancy and not license. Both the courts below were, therefore, perfectly right in holding that the petitioner was the sub-tenant. I see no reason in view of the aforesaid discussion to disturb the findings of both the courts below.

21. Faced with such situation, Mr. Zaveri, the learned advocate representing the petitioner submitted that in that case also decree of eviction ought not to have been passed because right from 1957, the petitioner

was in possession, and therefore, he legally became the sub-tenant in 1959, because Bombay Rents, Hotel & Lodging House Rates Control Act (Amendment), Ordinance 1959, came into force from 21st May, 1959, whereby, sub-tenancies created till then came to be made regular and legal. Whether the benefit of the amendment is available to the petitioner is the point, required to be examined. From the evidence of the petitioner which I have referred, it is clear that initially as associated partner of Balkrishna V. Doshi, he started to work in the western portion of the suit premises, and as such he continued to work till Balkrishna V. Doshi after coming back to India shifted his office to the new premises; and from November 1959 he hired the western portion and paid the rent for the first time on 3rd November, 1959, vide Exh.68. This fact appearing in his evidence in clear terms shows that right from November, 1959, he became the sub-tenant in the suit premises; prior to it he was simply a partner of Balkrishna V. Doshi, and had not acquired any status of a tenant or sub-tenant or any interest. In view of such fact can it be said that the petitioner after becoming the sub-tenant in November, 1959, acquired the right under the ordinance, legalising the sub-tenancies created till 21st May, 1959, to get his sub-tenancy legalised and regularised. The petitioner, who became the sub-tenant in November, 1959, i.e. subsequent to the ordinance, cannot have the advantage of having the benefits granted under the ordinance. He is, therefore, not the legal sub-tenant, and sub-tenancy created in his favour is unlawful, giving rise to a right entitling the opponent no.1 to have the decree of eviction on the ground of unlawful sub-tenancy available vide Section 13 (1) (e) of the Bombay Rent Act. On no other point submissions were made.

22. For the aforesaid reasons, both the Courts below were perfectly right in passing the decrees of eviction against the petitioner. There is neither error of fact or of law. I, therefore, see no reason to interfere with the same. The decrees are required to be confirmed. In the result this revision application being devoid of merits, fails, and the same is dismissed with costs.

23. At this stage, Mr. Zaveri, the learned advocate for the petitioner submits that two year's time to vacate the western portion of the suit premises may be granted to the petitioner so that by the time he would be able to make necessary arrangements. Right from 1977 the opponent no.1 is pinning for the possession. About 21 years have passed. It would therefore be unjust to grant

two years time; but atleast reasonable time if granted would meet the ends of justice. Time to vacate is therefore granted upto 10th July, 1998, on petitioner's tendering the usual undertaking before this court within a month from today, failing which, time granted shall be deemed to have been withdrawn, and in that case it would be open to the opponent no.1 to execute the decree immediately. Rule is discharged.

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